

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**United States Postal Service and George French**

**National Association of Letter Carriers, Branch 109  
(United States Postal Service) and George  
French.** Cases 34–CA–9194 and 34–CB–2378.

December 10, 2001

**DECISION AND ORDER**

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN  
AND WALSH

On April 3, 2001, Administrative Law Judge Margaret M. Kern issued the attached decision. The Respondent United States Postal Service and the Respondent Union filed exceptions and supporting briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order, as modified and set forth in full below.<sup>2</sup>

<sup>1</sup> The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We correct the following error in the judge's decision. The judge stated that the Respondent Employer's officer-in-charge Anthony Lombardoizzi and Union President Ronald Persico testified that they questioned Charging Party George French's seniority during the week of January 6, 2000, when they were awarding jobs based on seniority. Lombardoizzi testified, however, that he met with Persico to award jobs based on seniority in September or October 1999, not the week of January 6, 2000, and while Persico testified to an early January 2000 conversation with Lombardoizzi, it was about the seniority list, not job bidding.

The judge's error, however, does not affect her rejection of the testimony of Lombardoizzi and Persico. The judge's reason for discrediting Lombardoizzi's testimony was not based on the date of the conversation with Persico, and the judge found Persico generally not to be a credible witness.

In sec. IV.F, the judge inadvertently stated that the "1994–1998 National Agreement . . . was interpreted in 1992." The correct date of the agreement to which the judge refers is 1990–1994.

<sup>2</sup> We have modified the judge's recommended Order (1) in accordance with our recent decision in *Ferguson Electric Co.*, 335 NLRB No. 15 (2001); (2) to note in par. A1(a) that the Respondent Employer is not to reduce seniority at the unlawful request of the Respondent Union; (3) to note in par. B.1(b) that the Respondent Union is not to cause or attempt to cause the Respondent Employer to discriminate against employees by demanding a reduction in seniority of any employee who has a personal disagreement with the Respondent Union; (4) to provide in par. B.2(a) that the Respondent Union is to send George French a copy of its notification to the Respondent Employer that it has no objection to the restoration of French to his previous position on the seniority list; (5) to provide that the Respondent Employer and the Respondent Union are to jointly and severally make French whole; (6) to include in pars. A.2(b) and B.2(b) the statement that the Respondent Union's liability for backpay shall terminate 5 days

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that

A. Respondent Employer, United States Postal Service, Shelton, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Reducing the seniority of, or otherwise discriminating against, any employee in regard to hire or tenure of employment or any term or condition of employment, pursuant to the unlawful request of Respondent Union, National Association of Letter Carriers, Branch 109, thereby encouraging membership in a labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, restore George French to his previous position on the seniority list with a seniority date of April 7, 1987.

(b) Jointly and severally with the Respondent Union, make George French whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent Union's liability for backpay shall terminate 5 days after it notifies the Respondent Employer that it has no objection to the restoration of French to his previous position on the seniority list with a seniority date of April 7, 1987.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful reduction of George French's seniority, and within 3 days thereafter notify him in writing that this has been done and that the reduction of seniority will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

after it notifies the Respondent Employer that it has no objection to the restoration of French's seniority; (7) to require the Respondent Employer and the Respondent Union to remove from their files any reference to the reduction of French's seniority and to notify French in writing that they have done so and that the reduction of his seniority will not be used against him in any way; and (8) to require the reciprocal posting of notices. See *Nationsway Transport Service*, 327 NLRB 1033 (1999).

(e) Within 14 days after service by the Region, post at its Shelton, Connecticut facility copies of the attached notice marked "Appendix A."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent Employer and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent Employer has gone out of business or closed the facility involved in these proceedings, the Respondent Employer shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent Employer at the Shelton, Connecticut facility at any time since January 27, 2000.

(f) Post at the same places and under the same conditions set forth in paragraph 2(e) above, and as soon as they are forwarded by the Regional Director, copies of the Respondent Union's attached notice marked as "Appendix B."

(g) Furnish the Regional Director for Region 34 signed copies of Appendix A in sufficient number to be posted by the Respondent Union in places where notices to its members are customarily posted.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Employer has taken to comply.

B. Respondent Union, National Association of Letter Carriers, Branch 109, Derby, Connecticut, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees with loss of seniority for arbitrary or invidious reasons.

(b) Causing or attempting to cause the Respondent Employer, or any other employer, to discriminate against employees in violation of Section 8(a)(3) of the Act by demanding a reduction in seniority of any employee who has a personal disagreement with the Respondent Union.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, notify the Respondent Employer, in writing, with a copy to

George French, that it has no objection to, and affirmatively requests, the restoration of French to his previous position on the seniority list with a seniority date of April 7, 1987.

(b) Jointly and severally with the Respondent Employer, make George French whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent Union's liability for backpay shall terminate 5 days after it notifies the Respondent Employer that it has no objection to the restoration of French to his previous position on the seniority list with a seniority date of April 7, 1987.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful reduction of George French's seniority, and within 3 days thereafter notify him in writing that this has been done and that the reduction of seniority will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Union office copies of the attached notice marked "Appendix B."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union and maintained for 60 consecutive days in conspicuous places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Post at the same places and under the same conditions set forth in paragraph 2(e) above, and as soon as they are forwarded by the Regional Director, copies of the Respondent Employer's attached notice marked as "Appendix A."

(g) Furnish the Regional Director for Region 34 signed copies of Appendix B in sufficient number to be posted by the Respondent Employer at all places at the Shelton, Connecticut facility where notices to its employees are customarily posted. Copies of that notice, after being signed by the Respondent Union's authorized representative, shall be returned to the Regional Director for disposition by him.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>4</sup> See fn. 3, *supra*.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Union has taken to comply.

Dated, Washington, D.C. December 10, 2001

Peter J. Hurtgen,	Chairman
Wilma B. Liebman,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize  
To form, join, or assist any union  
To bargain collectively through representatives of their own choice  
To act together for other mutual aid or protection  
To choose not to engage in any of these protected concerted activities.

WE WILL NOT reduce the seniority of, or otherwise discriminate against, any employee in regard to hire or tenure of employment or any term or condition of employment, at the request of National Association of Letter Carriers, Branch 109, thereby encouraging membership in a labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, restore George French to his previous position on the seniority list with a seniority date of April 7, 1987.

WE WILL jointly and severally with National Association of Letter Carriers, Branch 109, make George French whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlaw-

ful reduction of George French's seniority, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the reduction of proper seniority will not be used against him in any way.

UNITED STATES POSTAL SERVICE

APPENDIX B

NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize  
To form, join, or assist any union  
To bargain collectively through representatives of their own choice  
To act together for other mutual aid or protection  
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with loss of seniority for arbitrary or invidious reasons.

WE WILL NOT cause or attempt to cause the United States Postal Service, or any other employer, to discriminate against employees in violation of Section 8(a)(3) of the Act by demanding a reduction in seniority of any employee who has a personal disagreement with us.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, notify the United States Postal Service, in writing, with a copy to George French, that we have no objection to, and we affirmatively request, the restoration of French to his previous position on the seniority list with a seniority date of April 7, 1987.

WE WILL, jointly and severally with the United States Postal Service, make George French whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful reduction of George French's seniority, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the reduction of seniority will not be used against him in any way.

NATIONAL ASSOCIATION OF LETTER CARRIERS,  
BRANCH 109

Lindsey Kotulski, Esq., for the General Counsel.  
Joseph Sassi, Esq., for the United States Postal Service

*Thomas Ciantra, Esq.*, for the National Association of Letter Carriers, Branch 109

## DECISION

### STATEMENT OF THE CASE

MARGARET M. KERN, Administrative Law Judge. This case was tried before me in Hartford, Connecticut, on November 16 and 17, 2000.<sup>1</sup> The consolidated complaint, which issued on July 20, was based on unfair labor practice charges filed on February 29, by George French against the United States Postal Service (the Postal Service or Respondent) and the National Association of Letter Carriers, Branch 109 (Branch 109 or the Union or Respondent).

It is alleged that on January 27, as a result of a personal argument between French and Ronald Persico, president of Branch 109, Persico threatened French with loss of his seniority. It is further alleged that on February 29, Persico requested the Postal Service lower French's seniority status and that on March 20, the Postal Service acceded to that demand. For the reasons set forth, I find the Union, acting through its admitted agent Persico, violated Sections 8(b)(1)(A) and (2) of the Act, and the Postal Service violated Section 8(a)(1) and (3) of the Act, as alleged. I further find that deferral to the decision of a grievance panel is inappropriate in this case.

### FINDINGS OF FACT

#### I. JURISDICTION

Respondents admit, and I find, the Board has jurisdiction in this matter under Section 1209 of the Postal Reorganization Act.

#### II. LABOR ORGANIZATION STATUS

Respondents admit, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE FACTS

##### *A. Relevant provisions of the National Agreements*

The Postal Service and the National Association of Letter Carriers, AFL-CIO, (NALC) have been party to a series of collective-bargaining agreements (the National Agreements). Relevant to this case are several provisions in five successive National Agreements, covering the period 1984 to 2001. The provisions are identical in all of these agreements<sup>2</sup> and provide in relevant part:

Article 12.2.B: An employee who left the bargaining unit on or after July 21, 1973 and returns to the same craft:

1. Will begin a new period of seniority if the employee returns from a position outside the Postal Service; or
2. Will begin a new period of seniority if the employee returns from a non-bargaining unit position within the Postal Service, unless the employee returns within 2 years from the date the employee left the unit.

41.2.A.2: Seniority is computed from date of appointment in the Letter Carrier Craft and continues to accrue so long as ser-

vice is uninterrupted in the Letter Carrier Craft in the same installation, except as otherwise specifically provided.

Article 41.2.F: Return From Any Position for Which Selection Was Based on Best Qualified. Effective July 21, 1978, when an employee, either voluntarily or involuntarily returns to the Letter Carrier Craft at the same installation, seniority shall be established after reassignment as the seniority the employee had when leaving the Letter Carrier Craft without seniority credit for service outside the craft.

In 1990, arbitrator Carlton J. Snow decided five cases that arose under the 1984–1987 and 1987–1990 National Agreements. The issue in each case was the seniority status of former supervisors returning to the letter carrier craft. Snow noted that there was no clear pattern of reassigning former supervisors to full-time regular status. The data showed that the Postal Service had acted at its discretion, sometimes assigning returning supervisors to full-time regular status and sometimes to part-time flexible status. Snow interpreted article 41.2.A.2 as obliterating the accumulated seniority rights of a letter carrier who transfers to a different installation on becoming a supervisor and who then returns to his original installation as a letter carrier regardless of how long the supervisor was out of the craft. In rendering his decision in each of the five cases presented to him, Snow observed that the Postal Service had failed in each case presented to him to justify its decisions to place former supervisors into full-time regular positions.

In June 1998, the Postal Service and NALC published the Joint Contract Administration Manual (JCAM), as a guide to those provisions of the 1994–1998 National Agreement on which the national parties were in agreement. The purpose of the JCAM is to “inform labor and management in the field of these areas of agreement and encourage consistency and compliance with the issues treated.” The JCAM contains narrative explanations of each contractual provision which, according to the terms of the JCAM, are to be considered “dispositive of the joint understanding of the parties at the national level.” The JCAM narrative explanation of article 12.2.B states that if an employee leaves an installation and later returns to the letter carrier craft, article 12.2.B is not applicable. Rather, article 41.2.A.2 requires that in such cases the employee begin a new period of seniority. The JCAM narrative explanation of Article 41.2.A.2 states the general rule that a letter carrier's seniority is computed continuously from the date of appointment in the letter carrier craft if the carrier serves without interruption in the same installation. The JCAM narrative explanation of article 41.2.F reiterates that if an employee is awarded a best-qualified position in a different installation and later returns to the letter carrier craft in the original installation, article 41.2.A.2 requires that the employee begin a new period of seniority.

In April 1998, the Postal Service and NALC piloted a new dispute resolution process in selected areas of the country, including Connecticut. The program was ultimately incorporated into memoranda of understanding signed in July and September 2000, and made part of the 1998–2001 National Agreement. Under this new procedure, a dispute is initially discussed between the local shop steward and supervisor. This discussion constitutes the filing of the grievance. If the matter is not resolved at this initial stage, the grievance is taken to Step A which is a discussion between the shop steward and the installation head or postmaster. If these two individuals are not able to resolve the matter, the grievance is then taken to a Step B

<sup>1</sup> All dates are in 2000 unless otherwise indicated.

<sup>2</sup> The 1990–1994, 1994–1998 and 1998–2001 agreements were introduced into the record. The relevant provisions in the 1984–1987 and 1987–1990 agreements are summarized in the Snow arbitration award introduced into evidence. The only provision not referred to in the Snow award is article 41.2.F.

panel consisting of one management and one union representative. In Connecticut, the Step B panel representatives are Ed Halloran for the Union and George Costeines for the Postal Service. After reviewing the case, the Step B panel issues a written decision. If the representatives are in disagreement, the Union may proceed to take the case to arbitration. A proviso relating to the functions of the Step B panel provides: "Step B representatives may not be subjected to instruction or coercion intended to subvert the application of the contract as understood by the national parties."

#### *B. French's Employment History*

George French began his employment with the Postal Service in 1982. In December 1985, he was assigned to the Shelton, Connecticut post office as a letter carrier and his bargaining unit seniority was calculated from the time of that assignment.<sup>3</sup> He remained in the letter carrier position until August 1991, when he took a supervisory position at the Fairfield, Connecticut post office. After several months, French began to have doubts about his decision to become a supervisor and in October 1991, he telephoned Sal Persico, vice-president of the Union.<sup>4</sup> French inquired about returning to the bargaining unit and how it would affect his bargaining unit seniority. According to French, Sal Persico said French had "retreat rights" for up to 2 years. Sal Persico did not testify.

In October 1992, French again considered returning to the bargaining unit. He was aware of the possibility that if he returned to the letter carrier position, he might lose his accrued seniority and have to begin a new period of seniority. French contacted Ronald Persico and asked how he could return to Shelton as a letter carrier. According to French, Persico told him that he had to make his request in writing and that although he would not be given credit for the 14 months he worked as a supervisor, he would not lose his accrued bargaining unit seniority. In his testimony at trial, Persico flatly denied ever having had such a conversation with French.

French testified that about a week after this conversation with Persico, he contacted Patrick Jeanette, then superintendent of postal operations (SPO) of the Shelton facility. Jeanette told French it was his understanding if French reverted back to the bargaining unit, he would lose only the 14 months he worked as a supervisor and would not have to start a new period of seniority. Several days later, French met with Persico in the union hall. They again discussed what French's seniority status would be if he returned to the unit. French asked if he had 2 years to retreat back to the unit and Persico said yes and that the only time French would lose was the 14 months he spent as a supervisor. In this conversation with French, Persico said he had to talk to Jeanette. Persico denied having this conversation with French.

Jeanette testified he recalled French speaking to him about returning to Shelton as a letter carrier and that while he himself had no objection, when he spoke to Persico on the subject, Persico initially expressed the view that French should go to the bottom of the seniority list. Jeanette testified he was certain he spoke with his superiors about this issue because he did not

have the authority to take a personnel action without their approval. Although he could not recall specifically with whom he spoke, he recalled the decision was made to reinstate French to the bargaining unit with all of his accrued seniority and the only time he would not be given credit for was his 14 months as a supervisor. Jeanette testified that Persico verbally agreed to this arrangement. Persico flatly denied ever having spoken to Jeanette about French's return to the Shelton facility.

By letter dated October 27, 1992, French wrote to Mike Fluery, Director of Human Resources and requested to return to the Shelton facility as a full-time letter carrier. In a memo dated October 29, 1992, Fluery approved French's request. A personnel action form (Form 50) prepared by the Postal Service reflects the effective date of the reassignment was October 31, 1992, and at the bottom of that form, in the remarks section, the following notation appears: "Changed to lower level at employees request—moved back to craft within two years."

When French returned to the Shelton facility, he was given full seniority credit for his previous years in the bargaining unit and was made a full-time letter carrier. He was not given credit for the 14 months he served as a supervisor and his newly calculated seniority date was April 7, 1987. French testified that about 2 weeks after his return, in mid-November 1992, Persico told him he should have come back as a part-time flexible employee, meaning that he should have started a new period of seniority which would have made him eligible only for part-time status. French told Persico if that were the case he would never have come back because he and his family could not survive on part-time pay. Again, Persico denied ever having had this conversation with French.

From October 31, 1992, and for the next 7 years, French's full-time status was not disturbed and his seniority date remained April 7, 1987. The seniority list was regularly posted over the employee timeclock.

#### *C. Early January 2000*

Persico testified in or about early January 2000, letter carrier Ismael Rosario mentioned to him that although he and employee Tim Herrick started their employment on the same day, Herrick's name appeared ahead of Rosario's on the seniority list. Rosario believed he should be ahead of Herrick. Persico testified he looked at the tiebreaker provisions of the collective-bargaining agreement and determined that because Rosario had previous military service, he should have been placed ahead of Herrick on the seniority list. Persico told Supervisor Bill Unfricht that Rosario should be ahead of Herrick on the list and he requested that Unfricht print him a copy of the seniority list.

After he received the list from Unfricht, Persico noticed French's name ahead of Herrick's name. Persico testified to his thought processes at the time:

I took the list and I was looking at the list and Mr. French's name jumped out at me. Then it hit me because there was problems with Mr. Rosario and there might have been other discrepancies there. [It] hit me as gee, this guy was a supervisor at one time. I'm wondering if maybe he's in the wrong spot.

Sometime in the week of January 6, Persico met with officer-in-charge Anthony Lombardozzi to award jobs bid on by employees based on seniority and French was one of the employees being considered. Persico described his conversation with Lombardozzi as follows:

<sup>3</sup> The exact date French became a letter carrier is not in the record.

<sup>4</sup> Sal Persico is the brother of Ronald Persico, the Union's president for 24 years. At the time of this phone call, Ronald Persico was on extended sick leave having suffered a heart attack. Ronald Persico returned to work in February 1992. To avoid confusion between the two brothers, I will use Sal Persico's full name when referring to him.

I mentioned to Mr. Lombardozzi that I thought that Mr. French was in the wrong place could he please check and get back to me and let me know if Mr. French had indeed been moved for the 14 months because when I was reading the JCAM I noticed in there that anybody that was outside of the Postal Service and then came back within two years they lose the time that they should have been out and Mr. French had been out for 14 months he was out and should have lost that. I asked him if he could let me know if he had been moved.

Lombardozzi testified that French was awarded the job for which he had bid. Rosario and Unfricht did not testify.

#### *D. January 26*

According to Persico, on the morning of January 26, he was in the men's room when French walked in. No one else was present. Persico said to him, "George, I've been checking the seniority, you might be in the wrong spot. I don't know if they have moved you for the time you spent outside the craft." Persico testified French got "huffy" and said to Persico "you can't do that, it's been seven years." Persico testified he was fearful of French at that point and walked out of the men's room. French denied having had any conversation with Persico in the men's room on January 26.

#### *E. January 27: Incident on the Workroom Floor*

The morning of January 27 was bitter cold and it was snowing. French punched in at his usual time of 7 a.m. and proceeded to sort his mail along with approximately 36 other letter carriers in a large room.<sup>5</sup> In years past on snowy mornings, the vehicle operations maintenance assistant (VOMA) had assisted the letter carriers in getting their trucks ready by starting the engines and clearing snow from the vehicles. On January 27, Persico held the position of VOMA. According to French, he left his case and walked to the head of the room to ask Unfricht if Persico was going to help get the trucks ready as the preceding VOMA had done. Unfricht said Persico was not going to do that. French walked back toward his case and observed Persico conducting a football pool with employees. He called to Persico and complained in a loud voice that Persico had time to run a football pool but didn't have time to do the trucks. Persico responded, also in a loud voice, it was not his job to do the trucks, French should do it himself. The volume and tone of the argument escalated and French accused Persico of only being out for himself. Persico retorted "I've been good to you. My brother's been good to you, I'll take your fucking seniority. You'll go right down the fucking list." Unfricht and Supervisor Tim Howard stepped in front of Persico and employee John Karpiej stepped in front of French. The exchange did not last more than 30 seconds.

Karpiej has been a letter carrier at the Shelton facility for 12 years. Karpiej testified that he was preparing his mail when he heard French say to Persico that instead of running the football pool, Persico should clean off the trucks and start the engines. Karpiej heard Persico respond that he and his brother had been good to French. He heard Persico say, "don't fuck with me, I'll take your seniority." Karpiej testified the two men were standing about 6 feet from one another and talking loudly, to the point of yelling.

<sup>5</sup> There are 37 cases or work stations where letter carriers sort mail in the Shelton facility.

Edgar Yother has been a letter carrier at the Shelton facility for 14 years. He was at his case when he heard French say "how come you're not down cleaning the trucks?" He heard Persico respond, "it's not my job." French then said, "hey, Brickett was always down there cleaning the trucks. He'd go down there and start the trucks for us." Yother heard Persico say he had taken care of French and French said yes he had, a long time ago. More words were exchanged and Yother heard Persico yell, "I'll take away your seniority." It was not until he heard this last statement that Yother looked around his case to see Unfricht, Howard, and several employees gathered around French and Persico. Yother testified French and Persico were speaking very loudly and he had no difficulty hearing what they said. He did not recall hearing any profanity.

Linda Dewey has been a letter carrier at the Shelton facility for 16 years. Dewey testified she was sorting mail at her case when she witnessed French and Persico standing 8 to 10 feet from one another, speaking in loud voices. She heard French tell Persico he should go down to the lower lot to start the trucks and she also heard him say Persico only took care of his own. She heard Persico respond that he and his brother had been good to French in the past and how would French like it if he took away his seniority. Later that same morning, Dewey was exiting the downstairs ladies room when she encountered Persico. Persico stated to Dewey he was not going to let French get away with what he did. Dewey's response was, "Ronnie, leave it alone."

Persico testified he was talking to an employee when he heard French yelling from a distance of 20 to 30 feet about someone running a football pool and he couldn't get his truck running. French "flew" past him and out the doors of the post office. A few minutes later, French came walking back inside and Persico asked him what the problem was with his truck. French came very close to Persico and yelled in his face, "can't get a fucking truck started and you don't do your fucking job." Persico said he became nervous because French was right over him. Persico said, "get the fuck out of my face. What are you mad because you're going to lose your seniority?" The confrontation ended and French walked away.

#### *F. January 27: Meeting in Lombardozzi's Office*

Lombardozzi testified that he was walking out of his office and down a corridor when he heard loud voices. He walked out to the workroom floor and he saw Persico walking down the aisle. Lombardozzi saw that Persico was "very upset" and brought him into his office. Persico told Lombardozzi that French was yelling at him because French thought Persico should have started the vehicles. Lombardozzi's testimony continued:

He asked me if I did anything yet with the seniority, looked into the seniority of George French . . . I said yes I have but I cannot find anything to show me. There was an issue over 14 months I believe it was seniority that I guess Mr. French was supposed to have been taken away from—that 14 months was supposed to have been taken away from him sometime back in 1990 or 1991 and he asked me if I had found any evidence of that. I said no I hadn't. He was pretty adamant about it. I said look why don't you calm down and you know I was just afraid that it was—I didn't want it to become—I was worried about Mr. Persico let's put it that way because we talked in the past and I knew that he had some troubles, health problems, and I just didn't want to see him get sick over a crazy

thing. So I tried to just you know bring the tension down as much as I could over the situation.

Persico admitted in his testimony that Lombardozzi suggested he come back with a cooler head before talking about French's seniority. Persico also admitted that he nevertheless persisted and asked Lombardozzi to print him out a copy of the seniority list. Lombardozzi complied and the printed list reflected French's seniority date of April 7, 1987. Persico drew an arrow from French's name which appeared in the 24th position on the list to the 34th position on the list. He told Lombardozzi, "If he does lose it, if you can't find it, this is where he would go." Lombardozzi responded "we'll do what we have to do."<sup>6</sup>

#### *G. January 29*

Both Lombardozzi and Persico testified that within a day or two of the workroom floor incident, they again discussed French's seniority. Both testified that Persico asked if Lombardozzi had obtained any information to show whether or not French had been given bargaining unit credit for the 14 months he had served as a supervisor. Both testified that Lombardozzi said that he had not verified that information and both testified that Persico stated that the seniority list should be adjusted anyway. Lombardozzi obliged Persico's request and the seniority list that had been marked up by Persico was posted above the timeclock where the seniority list was typically displayed.

At trial, Lombardozzi was asked about the quality and substance of his investigation into French's seniority status after the January 27 incident. He testified he looked at old seniority lists and personnel information available to him. He did not speak to anyone else in management and he did not speak to French. Nor did he consult the National Agreement, the Snow award or the JCAM. He summed up his decision making on the issue:

JUDGE KERN: Was the seniority list changed at Mr. Persico's request as it related to Mr. French?

A: Yes and no. He brought it to my attention and as I stated I really couldn't find anything to show concrete evidence where it was taken away. Really I don't recall speaking to any supervisors about it. The record keeping in the office was kind of shoddy so I basically went with his word, Mr. Persico's word, because being the Union president I would think that he would be privy to just as many seniority issues as we were.

Lombardozzi left the Shelton facility several days later and was replaced by John O'Mara, an admitted supervisor and agent of the Postal Service as of February 2.

#### *H. Persico's Questioning of Witnesses*

A subsequent seniority list printed on February 9, showed French in the 34th position with a new seniority date of June 27, 1988. On observing this, French spoke with O'Mara who confirmed that French's seniority had been recalculated. French

appealed to about 30 of his fellow employees to sign a statement if they heard Persico's threat. Five employees volunteered to sign a statement including Karpiej and Dewey.

Karpiej testified that about a month after he signed the statement attesting to his observations on January 27, he was summoned to the postmaster's office in the Shelton facility. Present in the office when he arrived were Persico and Fran Krugel, shop steward. Persico asked him a series of questions about the statement, but Karpiej did not testify what specific questions were asked.

Dewey testified that she was summoned to the postmaster's office by Unfricht and she was afraid she had done something wrong. Once in the office, Unfricht, Persico, and Krugel were present. Unfricht told Dewey that Persico was there to talk to her and told Dewey to sit down. Persico had a copy of Dewey's statement and proceeded to question her about why she signed the statement and about her recollection of the events of January 27. He asked her why she didn't come to him with the statement before she signed it and she said she didn't think she had to. Krugel took notes as Dewey spoke. Dewey repeatedly said to Persico that his questioning of her was wrong and asked why he was doing this. Persico responded, "why don't you just answer the questions."

#### *I. French's Grievance*

French filed a grievance claiming that the lowering of his position on the February 9 seniority list violated Articles 5 and 41 of the National Agreement,<sup>7</sup> and also violated the October 1992 agreement reached between Persico and Jeanette. On February 23, Unfricht denied the grievance at step 1.

Sometime after the step 1 decision, French again spoke with O'Mara and related to him the events of January 27 and his subsequent drop on the seniority list. O'Mara testified that he advised French as follows:

Well I told George he should be careful because he was putting a lot more on the line because in reality at the time he shouldn't have lost the 14 months. He should have lost all of his seniority and that if he pushed the issue he could end up losing more on the seniority list because if they determined that that's where he actually should have been, he would have dropped by 11 positions or more.

French prepared a submission of facts to support his grievance at the step 2 level. In that packet of information, French stated that on his return to the bargaining unit on October 31, 1992, an agreement was reached between Jeanette and Persico that French would only lose seniority credit for the 14 months he was a supervisor. He went on to state: "The National [collective bargaining agreement] states otherwise, but the Local Union President knew this and had the authority to make the agreement. This agreement was made over (7) years ago." French claimed that the recalculation of his seniority date from April 7, 1987, to June 27, 1988, was done at Persico's insistence and that Persico was motivated purely out of personal animosity toward French. He claimed the Postal Service's action not only violated the National Agreement but also violated Section 8 of the Act. Attached to French's submission were the employee letters regarding the January 27 incident as well as a

<sup>6</sup> On the printed copy of the seniority list French appeared in the 24th position, Herrick in the 25th position and Rosario in the 26th position. Persico hand numbered the names on the list and crossed out the name of employee Macdonald in the seventh position. Because Macdonald's name appears on subsequent seniority lists in the seventh position, I have included Macdonald in calculating French's position on the January 27 list. Regardless of whether Macdonald is counted or not, Persico dropped French 10 positions on the list which is the operative fact in this case.

<sup>7</sup> Article 5 is a general prohibition against unilateral action by the Postal Service in violation of any provision of the National Agreement or in violation of the law. The relevant provisions of article 41 have previously been summarized.

letter dated February 15, from Jeanette in which Jeanette wrote: "As I recall it was agreed by the National Association of Letter Carriers (local branch) and by management that he would lose only that time he served as a supervisor at the Fairfield Post Office which was approximately 14 months."

Persico testified his review of French's submission prompted him to reexamine the JCAM and he noticed, for the first time, the narrative explanation of article 41.2.F indicating that on returning to Shelton, French should have started a new period of seniority. Persico testified he had missed this provision when he had earlier investigated French's status.

On February 28, Persico and O'Mara met and O'Mara told Persico that French had not been given credit for his 14 months seniority as a supervisor, i.e., French's seniority date of April 7, 1987, was correct and the June 27, 1998 date was incorrect. Persico's response to learning that O'Mara deemed French's grievance meritorious was to tell O'Mara "well that's moot anyway right now . . . I just said to him I'm going to withdraw that grievance and file a new one." Persico never advised French that he had withdrawn his grievance.

On a seniority list printed on March 7, French was restored to the 24th position with a seniority date of April 7, 1987.

#### *J. Persico's Class Action Grievance*

On February 29, Persico filed a class action grievance alleging the Postal Service had failed to keep an updated seniority list. The remedy sought was described as follows:

1) That Mr. Rosario be placed ahead of Mr. Herrick on the seniority list. 2) That Mr. French be placed behind Mr. Schlenk on the seniority list with a seniority date of (10-31-92) the day that he returned back to the carrier craft in Shelton from Fairfield.

In support of his position, Persico incorporated as Union's exhibit 2 the JCAM narrative explaining article 41.2.F. The grievance was denied at the initial step by Unfricht and on March 9, Persico and O'Mara met to conduct the Step A meeting. O'Mara denied the grievance as untimely. Specifically, O'Mara determined that the Union was aware of French's placement on the seniority list when he returned to the bargaining unit in 1992. It was O'Mara's position that the reduction in French's seniority by only 14 months was not grieved in 1992 because the Union had agreed that was the proper placement for him on the seniority list. O'Mara's stated view was that the Union's waiting 8 years to ask for a further reduction in French's seniority was unreasonable. Persico appealed from O'Mara's denial of the grievance and the matter was submitted to the Step B panel. Incorporated in the packet of materials forwarded to the Step B panel was a copy of French's submission of facts that he had prepared in connection with his own grievance.

On March 17, the Step B panel determined that the class action grievance was not untimely since it is the Postal Service's responsibility to maintain the seniority list and corrections must be made whenever an error occurs. The panel also determined that French was properly credited with his previous bargaining unit seniority on his return to Shelton. Relying specifically on article 41.2.F of the National Agreement, as interpreted by the JCAM on page 41-16, the panel concluded that French had returned to the same installation within 2 years and therefore should have received credit for the seniority he had prior to

leaving the unit, losing only the time he spent outside the bargaining unit.

When Persico received the Step B panel decision, he told O'Mara that the decision was incorrect and that he was going to call the panel members to straighten the matter out. O'Mara agreed to participate in a four-way conference call with Persico, Halloran, and Costeines. During the call, Persico pointed out that there was additional language on the bottom of page 41-16 of the JCAM which stated that where an employee leaves an installation to take a supervisory position and later returns to the letter carrier craft in the original installation, the National Agreement requires the employee begin a new period of seniority and the 2 year retreat provisions do not apply. Halloran and Costeines agreed that they had made a mistake.

Three days after its first decision, on March 20, the Step B panel issued a "corrected decision" in which it was concluded, based on article 41.2.A.2 of the National Agreement, that French should have begun a new period of seniority on his return to the Shelton post office.

Vernon Tyler is a labor relations specialist for the Postal Service. Tyler was asked about the appropriateness of local parties contacting the members of the Step B panel to advise them that their decision was wrong. Tyler testified that such contact would be improper.

On March 22, O'Mara sent a letter to French advising him of the Step B panel's March 20 decision and providing him with a copy of the adjusted seniority roster. This was the first time French was aware that the class action grievance had even been filed. On that roster, dated March 22, French was listed in the 40th position with a seniority date of October 31, 1992.

In May, French bid on a postal route and as a result of his lowered position on the seniority list, lost the bid to another, more senior, employee.

#### *K. French's Union Membership*

From December 1985, when he first became a letter carrier to the present, French has been a member of the Union in good standing, with the exception of the 14-month period he served as a supervisor. He has never sought or held an elected position. Persico testified that his pursuit of the class action grievance was motivated purely out of his desire to protect the seniority rights of all his members and was unrelated to his argument with French on January 27.

### IV. ANALYSIS

#### *A. Credibility*

I discredit the testimony of Ronald Persico as the record is replete with examples of his lack of credibility. I found French and Jeanette to be more credible witnesses than Persico and these individuals' testimony contradicted Persico's testimony in material respects. I credit French and Jeanette that they each spoke with Persico on several occasions in October 1992, about French's return to the bargaining unit. I found Jeanette to be a particularly credible witness who had no stake in the outcome of this case, and I reject the suggestion that Jeanette was predisposed to testify favorably for French because he earned a small commission as a real estate agent on the sale of French's home several years ago. It is entirely reasonable that the return of a supervisor to the bargaining unit was a matter that would have been discussed with the union president and Persico's testimony that he was completely unaware of the circumstances of French's return is simply not believable. I therefore reject as



false Persico's testimony that he first questioned French's seniority in early January 2000, when he was looking at the seniority list and French's name just "jumped out" at him.

I also reject Persico and Lombardozi's testimony that they questioned French's seniority during the week of January 6, when they were awarding jobs based on seniority. Lombardozi admitted that French was awarded the job for which he had bid. Had there been a genuine issue as to French's seniority at that time, he would not have been awarded the job.

Finally, I reject as utterly false Persico's testimony that he had a one on one conversation with French in the men's room on January 26. Persico testified that after he questioned whether French had been given credit for the 14 months he served as a supervisor, French became so upset that Persico was afraid French might do something to him. The fact is that French always knew he had not been given credit for those 14 months and would have had no reason to become upset by Persico's interest in the matter. Persico's testimony on this point is illogical and I credit French that this encounter never took place.

I credit the testimony of French, Karpiej, Yother, and Dewey as to the events of January 27, over the testimony of Persico. While all of these witnesses were generally credible, Dewey's testimony was particularly impressive. Dewey recounted how she was intimidated by Persico when he cross examined her in the postmaster's office about why she signed a statement against his interests. When she asked him why he was questioning her in this fashion, his imperious response was "just answer the questions." Dewey kept her head down throughout much of her testimony and was clearly anxious about testifying in Persico's presence. Under these difficult circumstances, I found Dewey to be particularly credible.

#### *B. The 1992 Decision of the Postal Service*

The credible evidence establishes that on French's request to return to the Shelton facility in October 1992, there was discussion amongst French, Persico, and Jeanette about French's seniority status and whether he would be able to return as a full-time letter carrier. Jeanette's testimony establishes that he consulted with his superiors in the Postal Service and that the decision was made to allow French to retain his accrued bargaining unit seniority. His testimony is corroborated in several ways. First, the uncontradicted testimony is that Sal Persico, the union vice president, told French that he had "retreat rights" for 2 years. Second, in his letter to Fluery, French requested to be returned as a full-time letter carrier and that request was granted. Third, the notation at the bottom of the Form 50 prepared on October 31, 1992, was "moved back to craft within 2 years," clearly a reference to the two year retreat provisions of the 1990-1994 National Agreement in effect at the time. Fourth, and perhaps most relevant, Persico had the right, under article 15, section 2 of the 1990-1994 National Agreement to challenge the Postal Service's determination of French's seniority rights and to file a grievance. Persico did not file a grievance and abided by that determination for 7 years.

There is no evidence to determine whether in 1992 the Postal Service and Persico were aware of the 1990 Snow arbitration award. It may be that they were ignorant of the decision, or it may be that they considered French's case distinguishable in some way. The record is silent on this point. What is clear is that neither the Postal Service nor Persico considered the JCAM interpretations in 1992 as the JCAM was not published until 6 years later.

Under all of these circumstances, I conclude that under the terms of the 1990-1994 National Agreement, as construed by the Postal Service in 1992, French was given credit for his accrued bargaining unit seniority on his return to the unit on October 31, 1992. The Union abided by that determination for 7 years.

#### *C. January 27 demand by Persico*

The credible testimony of French, Karpiej, Yother, and Dewey establishes that on January 27, French and Persico engaged in a heated exchange over Persico's refusal to assist the letter carriers in clearing their trucks of snow while at the same time conducting a football pool. In the course of that exchange, Persico threatened to take away French's seniority. There was no motivation for Persico to question French's seniority other than his anger and embarrassment at being called to task in front of fellow employees and union members. I therefore find Persico's threat to affect French's terms and conditions of employment because of personal animosity violated Section 8(b)(1)(A) of the Act as alleged in the complaint. *Miranda Fuel Co.*, 140 NLRB 181 (1962).

Immediately following the argument, Persico was visibly agitated and upset, so much so that Lombardozi was concerned for Persico's health given his history of heart disease. Later that morning, Persico was still angry and told Dewey he was not going to let French "get away with what he did." That same day, Persico took a pen and marked up the seniority list, drawing an arrow to indicate French should be moved from the 24th position on the list to the 34th position. He instructed Lombardozi that if Lombardozi could not find evidence to establish whether or not French was properly listed on the seniority list, he should rely on Persico's markings and reduce French's seniority anyway. Two days later, on or about January 29, without having verified Persico's assertions in any objective way, Lombardozi posted the adjusted seniority list. The General Counsel did not specifically allege these acts as violating Sections 8(b)(2) and 8(a)(3). Nevertheless, I find the issues were sufficiently raised by the pleadings and fully litigated at the hearing. *Williams Pipeline Co.*, 315 NLRB 630 (1994); *Pergament United Sales, Inc.*, 296 NLRB 333, 334 (1989), *enfd.* 920 F.2d 130 (2d Cir. 1990). It is therefore appropriate to make a finding with respect to this conduct particularly, where as here, the violations are established, at least in part, by the testimonial admissions of Persico and Lombardozi. *Metrocare Home Services*, 332 NLRB No. 155 fn. 2 (2000). I therefore find that on January 27, the Union, by Persico, violated Section 8(b)(2) of the Act by causing and attempting to cause the Postal Service to discriminate against French in violation of Section 8(a)(3) of the Act. I further find that on January 29, the Postal Service violated Section 8(a)(3) of the Act by acceding to Persico's arbitrary demand and reducing French's seniority. *Id.*

#### *D. The February 29 Filing of Class Action Grievance*

On February 28, O'Mara determined that French had not been given bargaining unit seniority for his time as a supervisor and sustained French's grievance. Not only did Persico fail to advise French that his grievance had been upheld by the officer-in-charge, Persico actually withdrew the meritorious grievance and continued his campaign against French. Persico's new theory, and the premise on which he filed the class action grievance as it related to French, was based on the JCAM narrative explanation of article 41.2.F. Again, the essential point is that the JCAM explanation of article 41.2.F was not published

until June 1998, 6 years after the decision was made regarding French's seniority status. When Persico filed the class action grievance on February 29, he was uniquely aware that he had previously agreed to the Postal Service's decision to credit French with his bargaining unit seniority and that he was relying on the JCAM to mask his true motivation in filing the grievance: to avenge his humiliation by French in front of his co-workers and fellow union members. Under these circumstances I find that by filing the class action grievance on February 29, Respondent Union, by Persico, violated Section 8(b)(2) of the Act.

#### *E. The March 20 decision of the Step B panel*

Respondents argue that the Board should defer to the March 20 decision of the Step B panel under the standards for deferral set forth in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984), and as applied to settlement agreements reached during grievance and arbitration proceedings. *Postal Service*, 300 NLRB 196 (1990); *Alpha Beta Co.*, 273 NLRB 1546 (1985), petition for review denied sub nom. *Mahon v. NLRB*, 808 F.2d 1342 (9th Cir. 1987). The General Counsel opposes deferral in this case.

Under *Spielberg/Olin*, (1) the arbitration proceedings must have been fair and regular; (2) all parties must have agreed to be bound; (3) the arbitral decision must not be clearly repugnant to the Act; (4) the contractual issue before the arbitrator must be factually parallel to the unfair labor practice issue; and (5) the arbitrator must have been presented generally with the facts relevant to resolve any unfair labor practice. I find that the first prong of the *Spielberg/Olin* test has not been met in that the proceedings which culminated in the March 20 resolution of the Step B panel were not fair and regular.

Persico was true to his word when he told Dewey that he was going to get French for what French had done to him, and from January 27 to March 20, Persico was a man on a mission. It was at Persico's insistence that Lombardozzi improperly took away 14 months seniority from French. French grieved that decision and his grievance was upheld by O'Mara, Lombardozzi's successor. When O'Mara told Persico that he had determined French's grievance meritorious, Persico withdrew French's grievance and filed a class action grievance the sole purpose of which, as it related to French, was to strip him of the seniority he had accrued from 1985 to 1991. Persico never advised French that his grievance was deemed meritorious or that Persico had filed a grievance that sought to disadvantage French. When the Step B panel issued its first decision on March 17, Persico was unhappy with the outcome which was favorable to French. At his initiation, he and O'Mara telephoned the panel members and Persico told them that their decision was wrong. This communication was improper as acknowledged by the Postal Service's own labor relations expert. As a direct result of Persico and O'Mara's phone call, the Step B panel reversed course and issued a decision adverse to French. The Board has long held that it is not consonant with statutory policy to defer to arbitration, or in this case to a grievance settlement, when the interests of the charging party discriminatee is in obvious conflict with the interests of the Union. *Russ Togs, Inc.*, 253 NLRB 767 (1980); *Kansas Meat Packers*, 198 NLRB 543 (1972). Deferral in this case is therefore inappropriate.

#### *F. Wright Line Defense*

In all cases alleging a violation of Section 8(a)(3) or violations of 8(a)(1) turning on employer motivation, the General

Counsel is required, in the first instance, to make a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision. Once this is established, the employer has the burden to demonstrate that the same action would have taken place even in the absence of the protected conduct. *Wright Line*, 251 NLRB 1083 (1980), enfd. 622 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

For all the reasons previously discussed, I find the General Counsel has established by a preponderance of the evidence that the Postal Service acceded to the Union's demands to reduce French's seniority. As to the January 29 reduction in French's seniority by 14 months, the evidence establishes conclusively that the sole reason Lombardozzi changed French's position on the seniority list was at the insistence of Persico whom Lombardozzi knew was acting out of anger and retaliation. The reason O'Mara reinstated French to his previous position on the list a month later was because it was the first time the Postal Service bothered to check the facts. I therefore find that the Postal Service has failed to satisfy its burden of establishing its defense that it would have reduced French's seniority on January 29, absent unlawful motivation.

Similarly, French's seniority status would not have been reduced on March 22, but for the class action grievance, the filing of which I have found to be an unfair labor practice. The Postal Service cannot divorce itself from the fact that the entire grievance process was corrupted by Persico's invidious motives. I reject the argument that if the Postal Service had been presented with a class action grievance on the issue of seniority, even in the absence of the January 27 dispute between Persico and French, the Step B panel would have reduced French's seniority. As already summarized, the evidence establishes that the Postal Service determined, under the terms of the 1994-1998 National Agreement as it was interpreted in 1992, that French was entitled to retain his seniority since he returned to the bargaining unit within 2 years. In fact, this interpretation paralleled the interpretation given by the Step B panel in its initial March 17 decision. It was only when Persico and O'Mara improperly communicated with the Step B panel that the panel members were persuaded that they had made an erroneous determination. I therefore find that the Postal Service has failed to satisfy its burden under *Wright Line*.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Postal Service by virtue of Section 1209 of the Postal Reorganization Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. On January 27, 2000, the Union, by Persico, violated Section 8(b)(1)(A) of the Act by threatening an employee with loss of job seniority for arbitrary and invidious reasons.
4. On January 27, 2000, the Union caused and attempted to cause Respondent Postal Service to discriminate against French in violation of Section 8(b)(2) of the Act by demanding his seniority be reduced for arbitrary and invidious reasons.
5. On January 29, 2000, the Postal Service violated Section 8(a)(3) of the Act by reducing French's seniority pursuant to Respondent Union's request.
6. On February 29, 2000, the Union caused and attempted to cause Respondent Postal Service to discriminate against French in violation of Section 8(b)(2) of the Act by demanding his

seniority be reduced for arbitrary and invidious reasons through the filing of a grievance.

7. On March 22, 2000, the Postal Service violated Section 8(a)(3) of the Act by reducing French's seniority pursuant to the Union's request.

8. Deferral to the March 20, 2000 decision of the Step B panel is inappropriate.

9. The unfair labor practices engaged in by Respondents affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having discriminatorily reduced the seniority of French from January 29 to February 28, 2000, and from March 22, 2000, continuing to the present, Respondent Postal Service must restore French to his former position on the seniority list with a seniority date of April 7, 1987. Respondent Postal Service and Respondent Union must jointly and severally make French whole for any loss of earnings and other benefits suffered as a result of this discrimination, computed on a quarterly basis plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>8</sup>

#### ORDER

A. Respondent United States Postal Service, Shelton, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Reducing the seniority of, or otherwise discriminating against, any employee in regard to hire or tenure of employment or any term or condition of employment, thereby encouraging membership in the National Association of Letter Carriers Branch 109 or any other labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, restore George French to his previous position on the seniority list with a seniority date of April 7, 1987.

(b) Make George French whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Shelton, Connecticut facility copies of the attached notice

marked "Appendix A."<sup>9</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the Shelton, Connecticut facility at any time since January 27, 2000.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. Respondent National Association of Letter Carriers, Branch 109, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with loss of seniority for arbitrary or invidious reasons.

(b) Causing or attempting to cause the United States Postal Service, or any other employer, to discriminate against employees in violation of Section 8(a)(3) of the Act.

(c) In any like or related manner restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, notify the United States Postal Service, in writing, that it has no objection to, and affirmatively requests, the restoration of George French to his previous position on the seniority list with a seniority date of April 7, 1987.

(b) Make George French whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(c) Within 14 days after service by the Region, post at its offices and in the Shelton, Connecticut facility copies of the attached notice marked "Appendix B."<sup>10</sup> Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material. In the

<sup>8</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>9</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "posted by order of the national labor relations board" shall read "posted pursuant to a judgment of the United States court of appeals enforcing an order of the national labor relations board."

<sup>10</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "posted by order of the national labor relations board" shall read "posted pursuant to a judgment of the United States court of appeals enforcing an order of the national labor relations board."

event that, during the pendency of these proceedings, the Respondent Postal Service has gone out of business or closed the facility involved in these proceedings, the Respondent Union shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the Shelton, Connecticut facility at any time since January 27, 2000.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Union has taken to comply.

Dated: Washington D.C. April 3, 2001

APPENDIX A  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT reduce the seniority of, or otherwise discriminate against, any employee in regard to hire or tenure of employment or any term or condition of employment, thereby encouraging membership in the National Association of Letter Carriers Branch 109 or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, restore George French to his previous position on the seniority list with a seniority date of April 7, 1987.

WE WILL make George French whole for any loss of earnings and other benefits suffered resulting from the reduction of his seniority, plus interest.

UNITED STATES POSTAL SERVICE

APPENDIX B  
NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with loss of seniority because of a personal disagreement with us.

WE WILL NOT cause or attempt to cause the United States Postal Service, or any other employer, to discriminate against employees in violation of Section 8(a)(3) of the Act by demanding a reduction in seniority of any employee who has a personal disagreement with us.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, notify the United States Postal Service, in writing, that we have no objection to, and we affirmatively request, the restoration of George French to his previous position on the seniority list with a seniority date of April 7, 1987.

WE WILL make George French whole for any loss of earnings and other benefits suffered resulting from the reduction of his seniority, plus interest.

NATIONAL ASSOCIATION OF LETTER CARRIERS,  
BRANCH 109